

May 29, 2003

The Honorable Steven H. Amick
Legislative Hall
411 Legislative Avenue
Dover, DE 19901

Dear Senator Amick:

I write on behalf of the State Council for Persons with Disabilities (SCPD) to thank you for sponsoring S.C.R. 6 which urges the Division of Social Services (DSS) to provide for a cap or waiver of their non-emergency transportation co-pay policy for hardship cases. As a courtesy, Council is providing you with the latest developments regarding this issue.

As you know, DSS adopted final regulations requiring beneficiaries to pay a \$1.00 per trip co-pay for non-emergency Medicaid transportation in December, 2002. As a follow up to the adoption of the regulation in December, the Development Disabilities Council (DDC) asked the Center for Medicaid and Medicare Services (CMS) to carefully review the consistency of the regulation with federal Medicaid standards. CMS has now issued the enclosed April 24 letter which essentially finds that DSS is exempt from the normal limits on co-pays by treating transportation as an administrative expense.

As an additional follow-up to the adoption of the December regulation, the SCPD questioned the legality of adopting the regulation retroactively, i.e., proposing the non-emergency regulation October 1, 2002 with an effective date of October 1, 2002. The Attorney General's Office has now issued the accompanying April 15 letter which concludes "there may be some irregularities in the effective date of the regulations". As a result, DSS has extended the time period for aggrieved beneficiaries to challenge co-pays by requesting a fair hearing by April 30, 2003. The normal appeal period is 90 days from occurrence which would have expired for beneficiaries challenging co-pays imposed prior to issuance of the final regulations on December 1, 2002.

Thank you for your consideration and please contact SCPD if you have any questions regarding this issue.

Sincerely,

Rita Landgraf
Chairperson
State Council for Persons with Disabilities

cc: Governor=s Advisory Council for Exceptional Citizens
Developmental Disabilities Council
Ms. Sandra Reyes, Esq.

